

EIGHTY-EIGHTH SESSION

In re Palma (No. 6)

Judgment 1918

The Administrative Tribunal,

Considering the sixth complaint filed by Mr Francesco Palma against the European Southern Observatory (ESO) on 27 June 1998, the ESO's reply of 24 August, the complainant's rejoinder of 7 September and the Observatory's surrejoinder of 21 October 1998;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Italian who was born in 1948, was a member of the staff of the ESO from 1 September 1989 to 31 August 1995. Other material facts and information on his career are set out in Judgment 1665 of 10 July 1997 on the complaint which he filed against the European Organization for Nuclear Research (CERN) and in Judgment 1718 of 29 January 1998 on his first complaint against the ESO.

By a letter of 17 February 1998, the complainant requested the Director General of the ESO to disclose and deliver to him copies of any correspondence concerning him which had been exchanged by the ESO and CERN since 7 July 1995, the date on which the Rehabilitation Board met. He received no reply. On 14 April 1998, he lodged an internal appeal with the same objective. Having received no reply within the period of sixty days which he gave the Director General to answer, he states that he is challenging the "implied negative decision" concerning his appeal.

B. The complainant refers in particular to the International Labour Organization's Medical Care and Sickness Benefit Convention, 1969 (No. 130), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). He contends that there was collusion between CERN and the ESO to deny him his rights to health and work, in violation of basic principles of law. He submits that the manner in which the ESO "passed the ball" to CERN proves the existence of hidden correspondence concerning an agreement between these two organisations.

He requests the Tribunal to quash the implied negative decision which he is impugning, to order the disclosure and delivery of the requested documents, and to grant him costs.

C. In its reply the ESO denies any collusion. It argues that the complainant does not allege an infringement of the terms of his contract of employment nor the provisions of the ESO Staff Regulations, as required under Article II, paragraph 5, of the Statute of the Tribunal. It submits that the Tribunal is not competent to order the disclosure of documents. It contends that staff members, and *a fortiori* former staff members, do not have access to files other than their personal administrative file. The complainant consequently has no right to obtain the information requested.

D. In his rejoinder the complainant takes the ESO to task for its bad faith and accuses it of endeavouring to obstruct justice. He argues that he can invoke in his complaint a breach of the general principles of law and refers to Article I 3.07 of the International Staff Rules regarding the ESO's obligation to protect staff members. He accuses the Director General of having failed in his duty by not convening the Joint Advisory Appeals Board.

E. In its surrejoinder the Observatory reaffirms its arguments and says that the documentation which the

complainant is seeking does not exist.

CONSIDERATIONS

1. The complainant entered the staff of the ESO on 1 September 1989 under a fixed-term contract. In a letter of 26 January 1995, the Head of Personnel informed him that the Director General had decided not to renew his contract when it expired on 31 August 1995.

2. In 1994, while he was working at the ESO, the complainant suffered a loss of vision in his left eye. In July 1995, the ESO Rehabilitation Board set the "degree of disability" and the loss of earning capacity at 39 per cent. The CERN Pension Fund initially accorded him an "unsuitability pension" and then, after an internal appeal, "*ex gratia* benefits equal to a partial incapacity pension of 40 per cent". Other material facts and information on the complainant's career are set out in Judgments 1665, 1718 and 1843,

3. In a letter of 17 February 1998, the complainant requested the Director General to disclose and deliver to him a copy of any correspondence concerning him which had been exchanged between the ESO and CERN since the meeting of the Rehabilitation Board on 7 July 1995. This letter remained unanswered.

4. The complainant lodged an internal appeal with the Director General on 14 April 1998 and, having received no reply, filed the present complaint on 27 June 1998 under Article VII, paragraph 3, of the Statute of the Tribunal.

5. In the material case, the complainant is seeking the disclosure of certain documents by the Observatory. He argues that he has the right to their disclosure and that the Observatory has the duty to produce them. This claim, to be admissible, must have a basis in law, which means that the complainant must indicate precisely the legal provisions which he is using in support of his claims. In this respect, the complainant bases his pleas on ILO Conventions Nos. 130 and 159 and the United Nations Charter. He also invokes Article I 3.07 of the International Staff Rules of the ESO and general principles of law.

None of the legal provisions invoked by the complainant confer upon him the right which he wants the Tribunal to recognise.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Julio Barberis
Seydou Ba

Catherine Comtet